Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

REPLY COMMENTS OF VERIZON ON THE FNPRM

William H. Johnson
Of Counsel

Katharine R. Saunders
Roy E. Litland
VERIZON
1300 I Street NW, Suite 500E
Washington, DC 20005
(202) 515-2462

Scott H. Angstreich
Collin R. White
KELLOGG HANSEN TODD FIGEL & FREDERICK, P.L.L.C.
1615 M Street NW, Suite 400
Washington, DC 20036

Attorneys for Verizon

February 16, 2018

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

REPLY COMMENTS OF VERIZON[1] ON THE FNPRM

In its *2017 Wireline Infrastructure Order*,[2] the Commission made substantial progress on removing legacy barriers to infrastructure deployment. But, as the record confirms, the Commission can do more. Adopting the *FNPRM* proposals is a strong next step.

In particular, the Commission should affirm that intrastate services, including local telephone service, do not require a Section 214(a) application; revise its approach to applying Section 214 to legacy voice services when other voice options are available; forbear from applying Section 214 to applications to discontinue services with no customers; and expand its streamlining for applications to grandfather and discontinue previously-grandfathered services. The Commission should also eliminate the notice requirements for network changes affecting customer terminal equipment or customer premises equipment, and apply streamlined notice procedures to any network change caused by a *force majeure* event. Finally, the Commission should codify its precedent on pole attachment overlashing without imposing restrictions that

[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, WC Docket No. 17-84, FCC 17-154 (Nov. 29 2017) ("*2017 Wireline Infrastructure Order*" or "*FNPRM*").

would cripple the benefits of overlashing. These reforms – as well as other reforms that the Commission is still considering from the initial *NPRM*[3] – would substantially speed broadband deployment and remove barriers to investment.

I. THE COMMISSION SHOULD FURTHER STREAMLINE DISCONTINUANCES TO ENCOURAGE ADOPTION OF NEWER TECHNOLOGIES AND TO ALIGN ITS RULES WITH CONGRESS'S INTENT

The Commission should further streamline discontinuances for legacy voice services, all services with no customers, and applications to grandfather or discontinue previously grandfathered services. As the opening comments confirm, today's robustly competitive voice marketplace has made the Commission's legacy voice discontinuance rules obsolete. The Commission should do here what it has done with respect to legacy data services: "remove unnecessary regulatory delay for carriers seeking to discontinue legacy services with no harmful impact to customers."[4] As it does so, it should be mindful that a patchwork of different regimes to govern (for example) different subparts of various services will unnecessarily confuse consumers and frustrate providers' compliance efforts. The Commission should instead choose simple, clear rules that will help providers efficiently retire copper and discontinue outdated legacy services.

The Commission should take several specific steps to that end. First, it should align its overall approach to the legacy voice market with the Communications Act's text and structure. The Commission should confirm that it lacks jurisdiction to regulate discontinuances of wholly intrastate legacy voice services. And it should conclude that a provider's discontinuance of a voice service offering triggers Section 214(a) only if the affected community's members would

[3] *See* Verizon FNPRM Comments at 2.
[4] *FNPRM* ¶ 84.

lack access to an alternative voice option. If necessary, the Commission should forbear from enforcing Section 214(a) to that extent. At a minimum, the Commission should replace the overly complex "adequate replacement" test with a standard that better reflects marketplace signals about what new services adequately substitute for newly-retired legacy voice services.

Moving beyond the context of legacy voice services, the Commission also should forbear from enforcing Section 214(a) where a provider is discontinuing a service that lacks customers. Requiring a regulatory approval process before discontinuing such a service wastes providers' and the Commission's resources and serves no public interest. Removing that requirement will allow providers to focus, as they should, on rolling out the next-generation services that their customers require. Finally, the Commission should broaden its recently adopted streamlining for applications to grandfather data services and to discontinue previously grandfathered services.

A. The Commission Should Further Streamline the Section 214(a) Discontinuance Process for Legacy Voice Services

1. The Commission Lacks Section 214(a) Authority to Regulate a Provider's Discontinuance of a Particular Voice Offering If the Affected Community's Members Have Access to Other Voice Options

As a preliminary matter, no party disputes that the Commission's "Section 214 authority applies only to interstate telecommunications services" and that "wholly intrastate services such as local telephone service are excluded from its reach."[5] For interstate services, Verizon explained in its opening comments that Section 214's text, structure, and legislative history all point to one conclusion: Congress passed the discontinuance provision to keep communities from losing contact with the outside world — not to empower the Commission to regulate each

[5] *See Technology Transitions*; *USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*; *et al.*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, ¶ 52 (2016) ("*2016 Technology Transitions Order*"); Verizon FNPRM Comments at 5.

provider's network upgrades and changes of individual offerings.[6] "The only thing that the Congress and the country [were] interested in" in passing Section 214(a) was the presence of "adequate service."[7]

No party has offered a different account of the statute's text, structure, and history that could justify prior Commissions' offering-by-offering regime. In any event, as we explained in our initial comments, today's vibrantly competitive voice marketplace confirms that that prior regime is unnecessary.[8] For that reason, the Commission can and should reverse that prior interpretation in favor of a determination that Section 214(a) as a matter of law extends only to those discontinuances of interstate service that threaten to completely cut off a community.[9]

2. In the Alternative, the Commission Should Forbear from Enforcing Section 214(a) with Respect to Legacy Interstate Voice Services

If the Commission concludes that Section 214(a) requires an application before a provider may discontinue a legacy service offering, however, then the record supports forbearance from enforcing the provision to that extent because the conditions for forbearance are satisfied.[10] Today's competitive voice marketplace has made offering-by-offering regulation an anachronism.[11] As AT&T noted, "[t]he Commission itself recently confirmed that 93% of the population is covered by at least four voice providers and that 99.7% of the population is covered

---

[6] *See* Verizon FNPRM Comments at 5-8; *see also* CenturyLink FNPRM Comments at 16 n.25 ("Verizon presented a strong rationale in its initial comments for concluding that a carrier does not trigger Section 214(a) by discontinuing a voice or data service offering if the affected community's members can secure comparable service through a fiber, IP-based, or wireless alternative.").
[7] 89 Cong. Rec. 786 (1943) (statement of Rep. Brown).
[8] *See* Verizon FNPRM Comments at 8.
[9] *See Mary V. Harris Found. v. FCC*, 776 F.3d 21, 24–25 (D.C. Cir. 2015) (stating that an agency may change position if it can "show 'that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better'") (citation omitted).
[10] *See* ADTRAN FNPRM Comments at 6; CenturyLink FNPRM Comments at 16-17.
[11] *See* Verizon FNPRM Comments at 8-9 (citing 47 U.S.C. § 160(a)).

by at least 2 voice providers."[12] CenturyLink rightly explained that "the general availability of and intense competition for wireline and wireless substitutes to legacy voice service" confirm that forbearance "would serve the public interest by hastening the transition to IP-based replacements to legacy voice and other services."[13]

3. At a Minimum, the Commission Should Discard the "Adequate Replacement" Test

The Commission should abandon the "adequate replacement" test for automatic grant of applications seeking to discontinue a legacy TDM-based voice service as part of a technology transition. That test – which is not in effect because it has not been approved by OMB[14] – is an overly complex standard that would require providers to collect an extraordinary amount of data for no offsetting benefit.[15] ITTA explains that the test does not (as the prior Commission thought) permit "streamlined treatment;" it "requires so much information from carriers that otherwise would choose to pursue it that, instead, it is a deterrent."[16] Were that test to go into

---

[12] AT&T FNPRM Comments at 7 n.17 (citing Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services, *Twentieth Report*, 32 FCC Rcd 8,968 (2017)).

[13] CenturyLink FNPRM Comments at 17.

[14] The adequate replacement test is not in effect because it has not been approved by OMB. *See 2016 Technology Transitions Order* ¶ 213 (specifying that the revisions to Section 63.71 require approval by OMB); *Technology Transitions, et al.*, Final Rule, Announcement of Effective Date, 83 Fed. Reg. 2,563 (Jan. 18, 2018) ("*Technology Transitions OMB Notice*") (adequate replacement test not included in notice announcing OMB approval and effective date of specified discontinuance rules changes).

[15] *See* Verizon NPRM Reply Comments at 27-28. The adequate replacement test would require a three-part showing that "one or more replacement service(s) offers all of the following: (i) substantially similar levels of network infrastructure and service quality as the applicant service; (ii) compliance with existing federal and/or industry standards required to ensure that critical applications such as 911, network security, and applications for individuals with disabilities remain available; and (iii) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors." *2016 Technology Transitions Order*, 31 FCC Rcd at 8305, ¶ 65.

[16] ITTA FNPRM Comments at 3.

effect, it "would require providers to collect an extraordinary amount of data for no offsetting benefit."[17] The rule has "stifled ILEC investment in the networks and technologies the [prior] Commission had proclaimed it was seeking to encourage, and served as a disincentive to fiber deployment by incumbent wireline carriers, with the paradoxical result of impeding the migration to IP-enabled networks and services."[18]

The Commission should eliminate the adequate replacement test and instead find that a discontinuance application should be granted if the provider certifies *either* (1) that it provides interconnected VoIP service throughout the affected service area, or (2) that at least one other alternative voice service is available in the affected service area.[19] Those commenters who assert that this approach is insufficient[20] overlook marketplace realities. As AT&T notes, "there is no reason to limit streamlining to situations in which *both* conditions are met:" "consumers, by their own actions, have established that" *either one* of these services adequately substitutes for a legacy voice service.[21] As ADTRAN explained, "[c]onsumers have already demonstrated that these newer voice services are a more than adequate substitute for legacy voice services" by "vot[ing] with their wallets."[22]

---

[17] Verizon FNPRM Comments at 10. True, the Commission did not in so many words seek comment on rejecting the adequate replacement test itself. But because abandoning that test would be the "logical outgrowth" of the Commission's request for comment, the Commission could properly issue a rule rejecting the test. *See Am. Coke & Coal Chemicals Inst. v. E.P.A.*, 452 F.3d 930, 938 (D.C. Cir. 2006); *accord FNPRM* at Dissenting Statement of Commissioner Mignon L. Clyburn at 112 (describing Verizon's proposal as "an end-run around our adequate substitute test").

[18] ITTA FNPRM Comments at 3.

[19] *See* Verizon FNPRM Comments at 10-11.

[20] *See, e.g.*, National Rural Electric Cooperative Association FNPRM Comments at 6.

[21] AT&T FNPRM Comments at 6-7.

[22] ADTRAN FNPRM Comments at 6-7.

4. The Commission Should Eliminate the Outreach Requirements Adopted In the *2016 Technology Transitions Order*

The record supports eliminating the burdensome and unnecessary consumer education and outreach requirements for discontinuing legacy wireline TDM-based voice services. A few parties argue that the outreach requirements – which have never become effective[23] – are necessary to protect consumers.[24] But, as CenturyLink and others explain, providers "have every incentive to keep their customers informed about any changes to their service and how they will affect those customers."[25] And providers have ongoing relationships with their customers and are therefore in the best position to determine how to communicate with them.[26] There is no need for the Commission to micromanage this process.[27] The Commission should eliminate the

[23] The outreach requirements are not in effect because they have not been approved by OMB. *See 2016 Technology Transitions Order* ¶ 213 (specifying that the revisions to Section 63.71 require approval by OMB); *Technology Transitions OMB Notice* (outreach requirements not included in notice announcing OMB approval and effective date of specified discontinuance rules changes).

[24] *See* Communications Workers of America ("CWA") FNPRM Comments at 3-5; Telecommunications for the Deaf and Hard of Hearing, *et al.* ("Consumer Groups") FNPRM Comments at 10-12; Public Knowledge, *et al.* FNPRM Comments at 6-7. Consumer Groups also argue that the outreach requirements are needed to protect persons with disabilities. *See* Consumer Groups FNPRM Comments at 10-12. But, as explained in the *2017 Wireline Infrastructure Order*, providers already have independent obligations to comply with the Commission's accessibility rules. *See 2017 Wireline Infrastructure Order* ¶¶ 153-54 (citing 47 U.S.C. §§ 255, 617 and related rules). Thus, the outreach requirements at issue in this rulemaking are not needed to protect persons with disabilities.

[25] CenturyLink FNPRM Comments at 19; AT&T FNPRM Comments at 8 ("Carriers have an interest to ensure that their customer-facing staff and customers on legacy voice services are fully educated about alternative services in order to win future business."); ADTRAN FNPRM Comments at 7 (noting that "service providers already have very strong incentives for educating their customers"); NTCA FNPRM Comments at 9 ("NTCA submits that these obligations, while well intentioned, are unnecessary supplements to the steps carriers would ordinarily take in accordance with marketplace demands.").

[26] *See* AT&T FNPRM Comments at 8; ADTRAN FNPRM Comments at 7; CenturyLink FNPRM Comments at 19.

[27] The *2017 Wireline Infrastructure Order* relied on similar logic to eliminate prescriptive requirements to notify retail customers of a copper retirement. *See 2017 Wireline Infrastructure Order* ¶ 45 ("[Incumbent LECs] do not require mandatory and prescriptive Commission-ordered

consumer education and outreach requirements for discontinuing legacy wireline TDM-based voice services.[28]

B. The Commission Should Forbear from Section 214(a) Discontinuance Requirements for Services with No Customers

The Commission should forbear from enforcing Section 214(a) for discontinuances of services with no customers. As AT&T observes, "[w]hen a service has no customers, . . . section 214 discontinuance processes are not necessary to ensure just and reasonable and nondiscriminatory terms of service, protect customers or otherwise promote the public interest for the simple reason that customers have demonstrated by their actions in the marketplace that they don't need or want the service."[29] The only commenter to oppose forbearance does not identify any meaningful purpose for applying Section 214(a) when there are no customers.[30] None exists, and mandating the current bureaucratic process in this context is a waste of Commission and provider resources. Verizon agrees with AT&T, CenturyLink, ITTA, and NTCA that the statutory criteria are satisfied and therefore the Commission should forebear from applying Section 214(a) to the discontinuance of services that have no customers.[31]

---

notice to educate and inform their customers of network transitions from copper to fiber. Rather, these communications must necessarily occur for the incumbent LEC to continue providing the services to which its customers subscribe").

[28] To the extent that it applies, the Commission's standard discontinuance process would also provide customers with information.

[29] AT&T FNPRM Comments at 4.

[30] *See* CWA FNPRM Comments at 6.

[31] *See* 47 U.S.C. § 160(a); CenturyLink FNPRM Comments at 16-17; ITTA FNPRM Comments at 18 ("[A]llowing carriers to expeditiously cease applying resources towards supporting services where there is literally no consumer demand enables them to instead devote such resources towards next-generation IP-based networks and other endeavors where the public interest is expressed through consumer demand."); NTCA FNPRM Comments at 11-12 ("[M]aintenance of the obligation would result in a regulatorily meaningless exercise that would simply generate administrative costs for both the carrier and the Commission, full of sound, perhaps, yet signifying nothing of practical benefit.").

C. The Commission Should Expand Its Streamlining for Applications to Grandfather and Discontinue Previously Grandfathered Services

There is widespread support in the record for extending the recently-adopted 10-day comment and 25-day auto-grant streamlining for applications to grandfather low-speed (less than 1.544 Mbps) legacy data services to additional higher-speed data services.[32] As we have explained, the grandfathering process should be further streamlined for *all* data services regardless of speed, as grandfathering a service does not change the experience for existing customers.[33] And streamlining the grandfathering process for all data services would have the added benefit of having a uniform set of streamlining procedures for grandfathering data services. If the Commission were to instead adopt its proposed less-than-25/3-Mbps threshold for streamlining additional data services,[34] the result would be one set of streamlined procedures for low-speed legacy data services and another similar but slightly different set of streamlined procedures for additional data services up to 25/3 Mbps. Rather than slicing and dicing its

[32] Section 214's discontinuance requirements apply only to telecommunications services. The *2015 Title II Order* classified broadband Internet access service ("BIAS") as a telecommunications service but forbore from applying Section 214's discontinuance requirements to BIAS. *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶¶ 509-12 (2015). After the Commission's recent reversal of the Title II classification becomes effective, Section 214's discontinuance requirements can no longer possibly apply to BIAS. *See Restoring Internet Freedom*, Decl. Ruling, Rep. & Order, & Order, WC Docket No. 17-108, FCC 17-166, ¶ 20 (Jan. 4, 2018) ("We reinstate the information service classification of broadband Internet access service . . . .").

[33] *See* Verizon FNPRM Comments at 14. Other parties also support extending the streamlining beyond the Commission's proposed less-than-25/3-Mbps threshold. *See* AT&T FNPRM Comments at 2-3 (streamlining should apply to any data service that meets certain conditions); CenturyLink FNPRM Comments at 12-13 (any data service up to 45/45 Mbps that meets certain conditions).

[34] *See FNPRM* ¶ 156.

streamlined procedures in this complicated manner, the Commission should have a single set of streamlined procedures that applies to applications to grandfather any data service.[35]

The Commission should also reject proposals that would delay or complicate the proposed streamlining for grandfathering services.[36] As we have explained, the Commission's recently-adopted rules for streamlining applications to grandfather low-speed legacy services do not include an "equivalent quality" requirement, and there is no reason to impose such a requirement on higher-speed data services.[37] If a party raises significant concerns about substitute services during the proposed 10-day comment period, the Commission can pull the application from the proposed 25-day auto-grant period. The Commission should also reject Windstream's proposed "safeguards." Windstream asserts it is especially important to government customers that they be allowed to make moves, additions, and changes while a service is grandfathered.[38] But as the Commission previously held, government customers can address service-transition concerns "in their negotiated service agreements which necessarily cover service continuity provisions."[39] The Commission should also avoid adding requirements that providers identify the specific speeds, rates, terms, and conditions of comparable services in their customer notices.[40] Providers already have incentives to provide customers with useful information about replacement services, and the Commission already "consider[s] the existence

[35] Of course, a provider may still choose the non-streamlined discontinuance process if that process better suits the provider's needs. *See* Verizon FNPRM Comments at 14 n.50.
[36] *See FNPRM* ¶ 156 (proposing that streamlining be conditioned on offering a replacement service "of equivalent quality"); Windstream FNPRM Comments at 3 (proposing "safeguards to protect end users").
[37] *See* Verizon FNPRM Comments at 14.
[38] *See* Windstream FNPRM Comments at 3.
[39] *See 2017 Wireline Infrastructure Order* ¶ 107.
[40] *See* Windstream FNPRM Comments at 3.

of available and adequate alternative services as a part of our five-factor test for evaluating discontinuance applications. Consequently, there is no need to make these applications unnecessarily arduous by adding redundant and inflexible new content requirements."[41] The Commission should also reject Windstream's request that LECs be prohibited from discontinuing services to customers before a term commitment has expired.[42] As the Commission has already explained in rejecting an earlier proposal by Windstream, "[n]othing in our rules modifies or abrogates the terms of contracts. Windstream offers no good reason to insert ourselves into contractual disputes."[43]

In addition to extending streamlined treatment to the grandfathering of all data services, the Commission should similarly extend streamlined 10-day comment and 31-day auto-grant treatment to applications to discontinue all data services that have been grandfathered for at least 180 days.[44] As the Commission noted in granting streamlined treatment for discontinuances of previously grandfathered low-speed legacy services, "the initial grandfathering of a service is a clear signal to . . . customers that such service is likely to be discontinued in the future."[45] This reasoning applies to *all* previously-grandfathered data services and therefore streamlined treatment should apply to applications to discontinue any service that has been grandfathered for at least 180 days.[46]

---

[41] *See 2017 Wireline Infrastructure Order* ¶ 104.
[42] *See* Windstream FNPRM Comments at 3-4.
[43] *2017 Wireline Infrastructure Order* ¶ 105.
[44] *See FNPRM* ¶ 159.
[45] *See 2017 Wireline Infrastructure Order* ¶ 96.
[46] *Cf.* CenturyLink FNPRM Comments at 13 (supporting streamlining of applications to discontinue previously grandfathered additional data services); AT&T FNPRM Comments at 3 (same).

II. THE COMMISSION SHOULD ADOPT ADDITIONAL REFORMS TO STREAMLINE THE NETWORK-CHANGE PROCESS

Parties have provided compelling reasons for the Commission to eliminate notice requirements for network changes affecting customer equipment and for the Commission to extend notice procedures for *force majeure* events to all network changes. These reforms will further streamline the network-change process so that providers can more smoothly transition from legacy copper networks to faster and more reliable technologies such as fiber.

A. The Commission Should Eliminate the Notice Requirements For Network Changes Affecting Customer Equipment

The record confirms that the Commission should eliminate both Section 68.110(b)'s requirement that wireline telecommunications providers give customers written notice if "any customer's terminal equipment" would be materially affected by a network change and Section 51.325(a)(3)'s requirement that incumbent LECs provide public notice of network changes affecting the interoperability of customer premises equipment.[47] As we have explained, providers cannot track every variety and capability of customer terminal or premises equipment and therefore providers cannot predict whether a network change will impact any such equipment.[48] And, as AT&T discusses, both of these rules were adopted when RBOC incumbent LECs were more dominant in the CPE industry – whereas today the CPE market is highly competitive and the current standards-setting process ensures that service providers, manufacturers, testing laboratories, and other interested parties have ready access to current CPE standards and any upcoming revisions.[49] Sections 51.325(a)(3) and 68.110(b) are relics from another era that should be discarded.

---

[47] *See FNPRM* ¶ 166.
[48] *See* Verizon FNPRM Comments at 16-17. *See also* AT&T FNPRM Comments at 10.
[49] *See* AT&T FNPRM Comments at 8-14.

The Commission should reject Consumer Groups' efforts to preserve Sections 51.325(a)(3) and 68.110(b). Recognizing the problems with the current rules, Consumer Groups say they are not opposed to modifying the rules to "clarify that carriers need only make a general determination as to whether their network changes are so significant that they could have an impact on the functionality of CPE."[50] But this proposal would merely replace one problematic determination with another. Because providers do not track all of the equipment that customers are using, it makes no sense to require them to make a "general determination" of whether a network change *could* impact customer equipment. Consumer Groups also assert that these rules are necessary to protect persons with disabilities and they thus propose to incorporate specific disability-related protections into the rules.[51] But, as explained in the *2017 Wireline Infrastructure Order*, providers already have independent obligations to comply with the Commission's accessibility rules.[52] Thus, Sections 51.325(a)(3) and 68.110(b) are not needed to protect persons with disabilities, and the Commission should eliminate those sections.

B. The Commission Should Apply Streamlined Notice Procedures for *Force Majeure* Events to All Network Changes

Commenters agree that the Commission should also adopt its commonsense proposal to extend its streamlined copper retirement notice procedures for *force majeure* and other unforeseen circumstances to all network changes. We and others have explained that the same considerations that justified such streamlining for copper retirements apply equally to other types of network changes.[53] Although a couple of parties ask the Commission to "proceed cautiously"

---

[50] *See* Consumer Groups FNPRM Comments at 6.
[51] *See id.* at 7.
[52] *See 2017 Wireline Infrastructure Order* ¶¶ 153-154 (citing 47 U.S.C. §§ 255, 617 and related rules).
[53] *See* ADTRAN FNPRM Comments at 6; AT&T FNPRM Comments at 14-15; CenturyLink FNPRM Comments at 14; ITTA FNPRM Comments at 9-10.

before extending the streamlining to all network changes, they do not explain why the streamlining should be limited to copper retirement.[54] There is no reason not to extend this commonsense approach to all types of network changes.

III. THE COMMISSION SHOULD CODIFY ITS PRECEDENT ON OVERLASHING WITHOUT IMPOSING NEW RESTRICTIONS

As parties here have urged, the Commission should codify its precedent allowing overlashing without any additional advance approval or advance notice requirements while avoiding imposing conditions that would cripple the benefits of overlashing. According to NCTA, the Commission's policy encouraging overlashing has been "a critical element of the regulatory foundation on which hundreds of billions of dollars of new investment has been made."[55] And overlashing will remain important as next-generation 5G networks will require dense networks of small cell antennas and the fiber backhaul to carry the traffic.[56] Parties have explained that overlashing increases their ability to deploy facilities faster and more efficiently. According to Crown Castle, "the ability to overlash marks the difference between being able to serve a customer's broadband needs within weeks versus six or more months when the delivery of service is dependent upon a new attachment."[57] Overlashing is also often significantly cheaper. According to the Fiber Broadband Association, overlashing fiber costs approximately 30 percent of what it would cost to install a new aerial attachment.[58] Parties have also explained that overlashers (or host attachers in the case of third-party overlashing) are also existing

[54] *See* CWA FNPRM Comments at 7; Utilities Technology Council FNPRM Comments at 6-8.
[55] NCTA FNPRM Comments at 2.
[56] *See* Crown Castle FNPRM Comments at 3; Comcast FNPRM Comments at 4-5.
[57] Crown Castle FNPRM Comments at 2.
[58] *See* Fiber Broadband Association FNPRM Comments at 1.

attachers and therefore "have the same interest in maintaining safe and reliable outside plant, networks and support structures as the utilities."[59]

Despite the Commission's precedent allowing overlashing subject to compliance with generally accepted safety, reliability, and engineering practices and prohibiting additional pole owner approval requirements,[60] the record shows that some pole owners impose advance-approval requirements or other burdensome practices that are hampering deployment through overlashing. For example, Crown Castle reports that some pole owners require separate applications for overlashing or they impose purported safety-related policies or standards "without any stated basis or rationale."[61] In order to remove any uncertainty, the Commission should codify its overlashing precedent. In doing so, the Commission should reject parties' calls for additional restrictions that would undermine the benefits of overlashing.

[59] NCTA NPRM Comments at 6.

[60] *See Implementation of Section 703(e) of the Telecommunications Act of 1996*; *Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, ¶ 68 (1998) (history omitted) ("Accordingly, we will allow third party overlashing subject to the same safety, reliability, and engineering constraints that apply to overlashing one's own pole attachment. Concerns that third party overlashing will increase the burden on the pole can be addressed by compliance with generally accepted engineering practices."); *Amendment of Commission's Rules and Policies Governing Pole Attachments*; *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12,103, ¶ 75 (2001) ("We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.").

[61] Crown Castle FNPRM Comments at 4. *See also* American Cable Association FNPRM Comments at 6-8 (describing pole owners' application and fee requirements); Comcast FNPRM Comments at 7 (stating that "some pole owners still attempt to impose prior approval and notice requirements on overlashing").

A. The Commission Should Continue to Prohibit Utilities from Imposing Advance Approval Requirements and Should Prohibit Advance Notice Requirements Because They Would Have the Same Effect as Advance Approval Requirements

The Commission should reject electric utilities' calls for a notify-and-attach process and instead adopt an attach-and-notify process that prohibits pole owners from imposing advance approval or advance notice requirements on overlashing. The *FNPRM* already rejected requests to reopen the Commission's overlashing precedent and allow pole owners to impose advance approval requirements.[62] Nevertheless, some parties continue to "propose[] that overlashing be subject to the same application review process as new pole attachment requests."[63] The Commission should once again affirm its long-settled precedent that overlashing is not subject to advance approval requirements and that any safety concerns can be addressed by compliance with generally accepted engineering practices.

The Commission should also not be swayed by parties' requests for clarification that they can impose advance notice requirements that would amount to de facto advance approval requirements. For example, CenterPoint/Dominion and Electric Utilities seek a 45-day advance notice requirement so that they can review and deny the overlashing if they have safety concerns.[64] But prohibiting advance approval requirements while leaving the door open for

---

[62] *See FNPRM* ¶ 162 n.509 ("Although one commenter asserts that 'overlashing must be subject to utility review through the applications process' because of potential safety concerns, and another asserts that 'Each Utility Needs to Retain the Right to Determine What Level of Review is Required,' neither offers a reason for us to disturb our long-held precedent and we see no reason to reopen that precedent here.") (citations omitted).

[63] Utility Coalition on Overlashing FNPRM Comments at 25. *See also* Edison Electric Institute FNPRM Comments at 16 (stating that it is reasonable for a utility to require prior approval of overlashing).

[64] *See* CenterPoint Energy Houston Electric, LLC, *et al.* ("CenterPoint/Dominion") FNPRM Comments at 4; Ameren Service Co., *et al.* ("Electric Utilities") FNPRM Comments at ii. *See also* AT&T FNPRM Comments at 15 (seeking 30 days' advance notice); NTCA FNPRM

advance notice requirements would dramatically reduce the efficacy of overlashing. As the Fiber Broadband Association notes, "requiring advance notice will open up the overlashing process to further delays and increased costs,"[65] as pole owners may seek extra time to review or throw up roadblocks to the proposed overlashing. Also, as we previously explained, in many instances when installing service to customer premises, we may need to drop a line from an existing attachment by overlashing it.[66] A provider often will not know that such overlashing is necessary until it is on site. In such instances, it would inconvenience the customer and be costly and inefficient for the provider to stop the installation, provide advance notice (up to 45 days under some proposals), and then return after the notice period passes.

Instead of requiring advance notice of overlashing, the Commission should require that parties provide *ex post* notice within a reasonable period of time – such as 15 business days – after the overlashing occurs. That notice could include a certification or pole loading analysis that the overlashing complies with generally accepted engineering practices and applicable standards.[67] After receiving notice, the pole owner can conduct an inspection and work with the overlasher (or other parties if there are preexisting violations) to address any safety or engineering issues.[68]

Comments at 5 (15 days' advance notice); CPS Energy FNPRM Comments at 5 (5-10 days' advance notice).

[65] Fiber Broadband Association FNPRM Comments at 9.

[66] *See* Verizon FNPRM Comments at 19-20.

[67] The Commission should prohibit pole owners from imposing additional standards unless they have a clear relationship to generally accepted engineering principles. *See* Crown Castle FNPRM Comments at 4 (stating that some pole owners impose additional requirements without a stated basis or engineering rationale).

[68] *See* Fiber Broadband Association FNPRM Comments at 9 ("Adopting an 'attach-and-notify' process would limit the opportunities for utilities to delay overlashing while still allowing them to conduct a post-overlashing audit to identify any issues resulting from the work.");

B. The Commission Should Hold That Its Overlashing Precedent Applies to Strand-Mounted Attachments

The Commission should also confirm its overlashing precedent and any adopted rules apply to strand-mounted attachments such as small cell wireless antennas. Some parties seek to narrow the definition of overlashing so that it applies only to "wire-to-wire" overlashing and would exclude mid-strand attachments.[69] These parties argue that the regular lengthy pole attachment process is necessary because strand-mounted wireless antennas raise unique safety and engineering issues.[70] But overlashing practice for many years has included not only fiber but also cable television amplifiers, splice boxes, optical nodes, Wi-Fi antennas, and other equipment.[71] And Crown Castle explains that it has already relied on the Commission's overlashing precedent to deploy 1,000 strand-mounted small cell antennas and plans to deploy 4,500 more this year.[72] Overlashing has long extended beyond "wire-to-wire" overlashing and

---

CenturyLink FNPRM Comments at 11 (proposing 10-day *ex post* notice requirement, post-overlashing inspection, and remediation of issues, if any, at overlasher's expense).

[69] *See* CenturyLink FNPRM Comments at 7-10; CenterPoint/Dominion FNPRM Comments at 9-11; Utility Coalition on Overlashing FNPRM Comments at 5; Xcel Energy FNPRM Comments at 8; CPS Energy FNPRM Comments at 9-12; Edison Electric Institute FNPRM Comments at 16.

[70] *See*, *e.g.*, CenterPoint/Dominion FNPRM Comments at 10-11.

[71] *See* NCTA NPRM Comments at 6 ("In analog days, cable operators spaced, respaced, and upgraded their strand-mounted amplifiers without incident. In digital days, cable operators overlashed fiber and upgraded amplifiers to house optical nodes without incident.); "Liberty Media Corp. Investor Day Tr.: Tom Rutledge, Charter Communications," *Thomson StreetEvents*, at 6 (Nov. 9, 2014), https://www.sec.gov/Archives/edgar/data/1091667/000109166714000227/chtr112014425filingtranscr.htm (Charter Communications CEO noting that "Cablevision has done really a significant infrastructure project business rolling out over 40,000 whole [sic] mounted Wi-Fi hotspots in places where people work and gather and play"); Cablevision Sys. Corp, Annual Report for the Year Ended Dec. 31, 2015, at 6, https://www.sec.gov/Archives/edgar/data/784681/000162828016011667/cvc-12312015x10k.htm (noting that "WiFi is delivered via wireless access points mounted on our broadband network" and via other means); Crown Castle FNPRM Comments at 2-3 (noting that "many cable television amplifiers, splice boxes, and other necessary facilities have been deployed on the strand nationwide . . . .").

[72] *See* Crown Castle FNPRM Comments at 3.

already has included strand-mounted antennas. There is no reason to now suddenly reverse course and begin excluding strand-mounted wireless antennas or any other non-wire-to-wire overlashing from the Commission's overlashing procedures.

As with other types of overlashing attachments, pole owners' safety concerns with strand-mounted attachments can be addressed by requiring overlashing attachers to provide *ex post* notice certifying that the overlashing complies with generally accepted engineering practices and applicable standards. After receiving the notice, pole owners can inspect the overlashing and coordinate with the overlasher to correct any issues resulting from the overlashing. The Commission should confirm that its overlashing precedent and any forthcoming rules apply to strand-mounted attachments such as small cell wireless antennas.

C. The Commission Should Reject Proposals to Require Removal of Retired Facilities

The Commission should reject new proposals that would require the removal of decommissioned facilities from poles and other infrastructure as a condition of overlashing or as a standalone rule.[73] These proposals are unworkable and would impede providers from investing in modern facilities. As Cincinnati Bell noted in a previous proceeding, "[i]n many instances, it is too expensive to physically remove small gauge or small pair quantity copper cable that is no longer used for service because the cost to remove it would exceed its salvage value."[74] Instead, it often makes more economic sense for providers to retire existing legacy facilities in place and overlash those facilities rather than incur the enormous expense of physically removing the legacy facilities from every pole, duct, conduit, and right of way in the relevant service area.

---

[73] *See* Utility Coalition on Overlashing FNPRM Comments at 26-27; Xcel Energy Comments at 8.

[74] Cincinnati Bell Telephone Company Comments, *Technology Transitions, et al.*, WC Docket No. 13-5, *et al.*, at 11 (Feb. 5, 2015).

Requiring providers to remove legacy facilities upon retirement would impede broadband deployment because every dollar spent on physically removing those legacy facilities would be a dollar that could not be spent on deploying modern facilities. The Commission should reject proposals that would require the removal of decommissioned facilities.

IV. CONCLUSION

As discussed above, the Commission should act quickly to exercise its statutory authority to eliminate barriers to infrastructure deployment.

Respectfully submitted,

VERIZON

William H. Johnson
Of Counsel

Katharine R. Saunders
Roy E. Litland
1300 I Street NW, Suite 500E
Washington, DC 20005
(202) 515-2462

Scott H. Angstreich
Collin R. White
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street NW, Suite 400
Washington, DC 20036

Attorneys for Verizon

Dated: February 16, 2018